

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Pamela Neppel, individually and as
the parent and legal guardian of Z.N.,
an incapacitated individual,

Plaintiff, Appellant,
and Cross-Appellee

v.

Development Homes, Inc.,

Defendant, Appellee,
and Cross-Appellant

and

Sandra J. Marshall, individually; Mark
Indvik, individually, and Mark and
Amelia Indvik as Co-Guardians of
S.K.O.; Konah Zunugo, individually
Defendants and Appellees.

Supreme Court No.
20200036

Civil No. 18-2017-CV-03249

Amicus Brief for the Protection & Advocacy Project in Support of
Plaintiff, Appellant, and Cross-Appellee, Supporting Reversal

Appeal from Order for Judgment dated September 12, 2019

Appeal from Judgment dated September 12, 2019

Appeal from Order for Amended Judgment dated January 21, 2020

Appeal from Amended Judgment dated January 24, 2020

In the District Court of Grand Forks County,

Northeast Central Judicial District,

The Honorable Lolita Hartl-Romanick, Presiding

Represented by:

David Boeck, N.D. ID# 03208, Special Assistant Attorney General,
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IDENTITY OF AMICUS AND ITS INTERESTS

- ¶1. The Protection & Advocacy Project (P&A) is an independent state agency that is a positive example of cooperative federalism, receiving authority from both federal and state laws, which complement each other to protect individuals with disabilities from abuse, neglect, and exploitation, and to provide advocacy for disability-related rights to individuals with disabilities and groups of individuals with disabilities.
- ¶2. The specific federal program related to this case is the Protection & Advocacy program for individuals with Developmental Disabilities (PADD). See 42 U.S.C. §§ 15041-15045 and 45 C.F.R. part 1326. The complementary state statutes are N.D.C.C. chapter 25-01.3, which apply to both individuals with developmental disabilities and individuals with mental illness. The state administrative rules are at Title 65.5 of the Administrative Code.
- ¶3. The Protection & Advocacy Project serves individuals with developmental disabilities in North Dakota and routinely uses the “Developmental Disabilities Bill of Rights” in support of both its protective work and its advocacy work.

¶14. The Protection & Advocacy Project believes it can offer perspectives shared by many North Dakotans with developmental disabilities.

LAW AND ARGUMENT

¶15. I. Plain Meaning of N.D.C.C. § 25-01.2-17

¶16. The district court misinterpreted N.D.C.C. § 25-01.2-17 and in doing so, has jeopardized individuals with developmental disabilities who otherwise have valuable rights identified in the North Dakota Bill of Rights for the Developmentally Disabled.

¶17. The statute's plain meaning is to open the door to all available legal remedies.

¶18. "Rights of the Developmentally Disabled" was enacted by the 1981 Legislature. See Rights of the Developmentally Disabled, 1981 N.D. Sess. Laws ch. 294. Senate Bill No. 2253 was labelled, "An Act to specify certain rights to which developmentally disabled persons are entitled." Chapter 25-01.2 serves as a bill of rights for individuals with developmental disabilities. Section 25-01.2-17 in broad terms, specifies those rights are enforceable

Every individual with a developmental disability is entitled to enforce any of the rights guaranteed by this

chapter by civil action or any other remedy available by common law or statute

¶9. Chapter 25-01.2 was enacted to identify specific rights already in existence that might be especially important to individuals with developmental disabilities. These rights had arisen through various state and federal statutes, administrative regulations, the federal and state constitutions, and judicial opinions. The intent of § 25-01.2-17, as outlined clearly in the testimony provided in support of the bill, was to give remedies for civil rights violations. See Clerk's notes, House Social Services & Veterans Affairs hearing on S.B. 2253, March 23, 1981 (testimony of John Kapsner, representing Association for Retarded Citizens). Neither the statute nor its legislative history specifically limits the means under which relief may be sought to enforce rights guaranteed under N.D.C.C. chapter 25-01.2.

¶10. The keys to interpreting North Dakota statutes are articulated in statutes that govern interpretation. Distinguishing itself among common law jurisdictions, a North Dakota governing statute declares:

The rule of the common law that statutes in derogation thereof are to be construed strictly has no application to this code. The code establishes the law of this state

respecting the subjects to which it relates, and its provisions and **all proceedings under it** are to be construed liberally, with a view to effecting its objects and to promoting justice.

N.D.C.C. § 1-02-01 (emphasis added).

¶11. The district court's interpretation of N.D.C.C. § 25-01.2-17 does not give effect to the plain language of the statute. It is not a liberal construction; it is not consistent with a vision of serving the objects of this disability rights law.

¶12. The district court narrowed its interpretation by limiting compensatory damages to actions seeking equitable remedies under Chapter 25-01.2. This narrow construction urged by the Defense, imaginatively restricts alternatives otherwise available to an injured individual with developmental disabilities.

¶13. Legislative intent and purpose

¶14. The legislative history includes a March 9, 1981 Legislative Council Staff Memorandum, laying out the source of rights for Senate Bill No. 2253. The rights codified at Chapter 25-01.2 are primarily derived from the North Dakota and United States constitutions and federal statutes. When Chapter 25-01.2 was enacted in North Dakota, it was in great part derived from 42 U.S.C. § 6010, a federal version "Developmental Disabilities

Assistance and Bill of Rights Act of 1975,” codified at 42 U.S.C. §§ 6000 *et seq.*

¶15. Title II of the Act was “Establishment and Protection of the Rights of Persons with Developmental Disabilities.” The Act created a list of protected rights and a mechanism for protection of those rights by authorizing a private cause of action and creating state protection and advocacy systems to protect and advocate for individuals and their rights. It was Congress’ unequivocal establishment of rights for individuals with developmental disabilities, which North Dakota largely adopted in creating our state Bill of Rights for individuals with developmental disabilities.

¶16. This interpretation of Chapter 25-01.2, and specifically, Section 25-01.2-17, is inconsistent with the intent behind passing the bill enacting rights for individuals with developmental disabilities. North Dakota Century Code’s provision for interpreting rules in the code states that “its provisions and all proceedings under it are to be construed liberally, with a view to effecting its objects and to promoting justice”. N.D.C.C. § 1-02-01. Protection and Advocacy asserts that Section 25-01.2-17 is clear in both its language and its purpose: ensuring that every individual with a developmental

disability is entitled to enforce any of the rights guaranteed under Chapter 25-01.2, using the full breadth of the law's remedies when any of those rights has been violated, whether that remedy derives from statute or common law.

¶17. Should this Court feel it necessary to look beyond the plain meaning of Chapter 25-01.2 and N.D.C.C. § 25-01.2-17, the statute's full legislative history is instructive. See N.D.C.C. § 1-02-39 (giving the court discretion to consider a law's purpose, the circumstances under which it was enacted, legislative history, and consequences of a particular construction, among other factors).

¶18. Statement of Counsel

¶19. No party or party's attorney has authored any part of this brief. No party or party's counsel has contributed money that was intended to fund preparing or submitting this brief. No person, other than the amicus curiae, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief.

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Certificate of Service

I certify that on July 31, 2020, I served a motion for leave to file an
amicus brief with a proposed amicus brief on these attorneys by email
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Dated: August 6, 2020

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I certify that today I am serving an Amicus Brief (corrected) and this
Certificate of Service on these attorneys by email at these email addresses:

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This Certificate of Service corrects an error made in a Certificate of Service for these documents August 6, 2020.

Dated: August 10, 2020

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